

REMARKS

Claims 25-30, as amended above, and new claims 31-35 are the only claims currently pending in this application. The foregoing separate sheets marked as "Listing of Claims" shows all the claims in the application, each with an indication at its first line showing its current status.

I. Applicants' Written Statement, Pursuant to 37 C.F.R. § 1.333(b)

Applicants and Applicants' undersigned counsel respectfully appreciate the Examiner's courtesy in granting the telephonic interview conducted with Applicants' counsel undersigned on July 19, 2006, and the Examiner's courtesy in considering reasons presented at the interview for favorable action on the claims that were discussed.

The topic of the July 19, 2006 interview was the May 31, 2006 Office Action rejection of claims 25-30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 802,254 ("Baker") and, in the alternative, as being unpatentable under 35 U.S.C. § 103(a) over Baker.

Claim 25, with a proposed amendment substantially identical to the amendment above, was the sole specific claim discussed. Applicants' undersigned counsel argued that the Baker apparatus is disclosed as a can cooking apparatus that conveys cans, once, left-to-right in an assembly-line manner, through a heated tank. Applicants' undersigned counsel presented that claim 25, as amended, required conveyor constructed and arranged to convey a plurality of vessel holders along a path as recited by the claim, such that a vessel in at least one of the holders contacts a location on its path a selectable number of times. Applicants' undersigned counsel presented, in support, that Baker's disclosed apparatus cannot be operated to meet this "selectable number of times" limitation.

Applicants' counsel submitted that Baker's apparatus cannot, for two reasons, convey cans in a forward-backward manner, which is not disclosed by Baker, and would require rotating the sprockets B⁵ and C⁵ clockwise,

which is Baker's disclosed operation, such that the conveyor chains D carry a can, beginning at the infeed mechanism encased within "G" at the left of Baker's Fig. 1, onto the conveyor chains D above the sprocket B⁵, left-to-right, over a projection E², to the sprocket C⁵ and then, in manner not disclosed by Baker, operating the sprockets B⁵ and C⁵ counter-clockwise, to convey the can back, right to left, to over the same "projection E²."

Applicants' counsel submitted that Baker is not capable of the above-described forward-backward operation because Baker discloses the sprockets B⁵ and C⁵ arranged such that the conveyor chains have a downward slope, and discloses that the slope is such that the cans are conveyed through the tank by gravity, and that the pusher-bars D' are present only to assure movement of the cans. Applicants' counsel identified Baker's specific recitation of this, and submitted that Baker nowhere teaches or discloses that the pusher-bars D' would be able to move a can up the slope of the conveyor chains. The Examiner did not disagree with Applicants' counsel's statement; the Examiner stated that he would consider the statement if presented to the Examiner in the Remarks of Applicants' response.

Applicants' counsel also submitted that Baker is not capable of the above-described forward-backward operation because cans returning right-to-left would collide with newly infeed cans at the infeed mechanism within the casing "G" at the left of Baker's Fig. 1. The Examiner's response was that this was irrelevant because Baker discloses that cans may be input by hand and, if only one can were input, it would not collide with a newly input can.

Applicants' counsel also submitted that Baker's apparatus cannot convey cans repeatedly around a closed loop path, which Applicants' counsel submitted as being the only conceivable operation of Baker's apparatus, other than the above-identified back-and-forth operation, that would cause a can to repeatedly contact a projection E², *i.e.*, meet the repeated contact limitation of the amended claim 25. Applicants' counsel submitted that Baker's apparatus

cannot convey a can in closed-loop path because Baker's conveyor chains D cannot hold a can on their underside, which would be necessary for the right-to-left return, because they have the chains D have no holders; the cans are supported on the top of the chains D by the force of gravity. When they get to the conveyor above the rightmost sprocket C⁵ they fall off. The Examiner did not disagree with Applicants' statement and stated that a corresponding limitation would be considered.

II. Rejections Not Based on Prior Art

In response to the rejection of claim 26 stated, at paragraphs 2-3 of the Office Action, as based on the phrase "a includes," Applicants have amended the claim, at line 3, to recite the intended wording, which is: "includes." Applicants respectfully submit that claim 26's amended recital of "includes" meets the definiteness requirements of 35 U.S.C. § 112, second paragraph.

In response to the rejection of claims 26-29 stated, at paragraphs 2-3 of the Office Action, as based on "lack of antecedent basis for 'the spacing between different adjacent ones of,' ... [and to have antecedent basis] there would need to be at least three projections," Applicants have respectfully amended claim 26, at lines 2 and 4, to recite "at least three of," immediately preceding "projections" and "troughs," respectively. Applicants respectfully submit that the amendment clarifies all limitations as to spacing, or "intervals between projections" in the words of the Office Action, to clearly meet all definiteness requirements of 35 U.S.C. § 112, second paragraph.

Applicants respectfully request, for the foregoing reasons, that the rejections of claims 26-29 based on 35 U.S.C. § 112, second paragraph be reconsidered and withdrawn.

III. Rejections Based on Prior Art

The Office Action rejects claims 25-30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 802,254 ("Baker") and, in the alternative, as being obvious over Baker under 35 U.S.C. § 103. See Office Action at pages 2-4.

Applicants respectfully traverse the rejections, and submit that Baker cannot anticipate, or establish obviousness of any of Applicants' currently pending claims, because Baker lacks any teaching, disclosure or other suggestion of, or toward, the claims' recited limitations and combinations of same.

The invention disclosed by Applicants specification and drawings to which Applicants' claim 25 encompasses includes holders for holding vessels, a conveyor for conveying the holders along a path having a substantially linear section, and projections and troughs along the substantially linear section, wherein constructed and arranged such that the agitating the conveyor transports the holders, and vessels, to repeatedly pass over the section having the projections and troughs, with the number of repeats being selectable by how long the conveyor is operated, or how many times its direction is reversed. Applicants have amended claim 25 to recite this structural arrangement as follows:

said vessel conveyor is constructed and arranged to move
said at least one vessel holder such that said vessel
contacts at least one of said plurality of contact locations of
said vessel contact agitator a selectable number of times

Claim 25, currently amended, at lines 13-17.

Applicants' specification and drawings disclose multiple example structures and arrangements supporting the above-quoted claim 25 language. The Baker reference, however, discloses nothing capable of meeting the above-quoted claim 25 language.

One example disclosed embodiment of claim 25 is an endless-belt conveyor, with vessel holders attached, which conveys vessels *repeatedly* around a closed-loop path to *repeatedly* pass over each of the projections and troughs, in the same direction each time. See Figure 5, depicting the direction of conveyance as "C." See *a/so*, specification at page 5, lines 19-27.

Baker has no structure capable of operating in this manner. If the left and right casings G were removed (which is not taught by Baker), and a can placed on the conveyor chain above the leftmost sprocket B⁵, it would travel, one time, to the rightmost sprocket C⁵ and simply fall on the ground. Such an operation would not meet the "selectable number of times" limitation of claim 25, because once and only once through Baker's tank is not a "selectable number of time" through the tank.

In another of Applicants' example embodiments of claim 25, a closed-loop the conveyor transports the holders, and vessels, in a back-and-forth manner, *a plurality of times* so as to repeatedly pass over the projections and troughs. See specification at page 6, lines 3-7.

As Applicants' undersigned counsel submitted to the Examiner during the July 19, 2006 interview, Baker does not disclose structure capable of operating in this manner. Baker's conveyor chains D are sloped downward, so that cans are conveyed from the left to the right, and down, by gravity. Baker discloses the pusher bars D' as only assisting gravity, to ensure that the cans are conveyed over the projections E2. The Examiner did not disagree with Applicants' counsel's statement. Applicants further submit that since Baker does not explicitly disclose the conveyor chains D and pusher bars D' being able to convey cans right-to-left, Baker must inherently disclose this structural limitation. "Inherency, however, may not be established by probabilities or possibilities"; instead "the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic," in this case that Baker's pusher bars D' can push cans up the slope, "necessarily flows from the teachings of" Baker.

MPEP § 2112(IV). Applicants respectfully submit that Baker provides no “basis in fact and/or technical reasoning to reasonably support the determination” that its pusher bars D’ can push cans up the slope of the conveyor chains D. Therefore, Baker does not inherently disclose the “selectable number of times” limitation of Applicants’ claim 25.

Another disclosed embodiment of claim 25 is the projections, troughs, holders and conveyor being constructed and arranged such that the conveyor transports the holders and vessels, back-and-forth along a pathway that may be entirely substantially linear, *a plurality of times, to repeatedly* pass over the troughs and projections, and thereby agitate the vessels. See specification at page 4, lines 26-29.

Baker does not teach, disclose, or suggest anything of such a structure.

Baker’s apparatus, instead, simply drops cans, by gravity, onto a first can-feeder G¹, which transfers the cans to a conveyor D which, by gravity and pusher bars D’, conveys the cans over projections E², once, through a tank A, to a second can-feeder G² which, in turn, discharges the cans from the apparatus. This is not a disclosure of a structure capable of being operated to meet the “selectable number of times” limitations of claim 25. Baker therefore does not, and cannot, disclose anything within the broadest reasonable meaning of Applicants’ claim 25, as currently amended. Baker therefore cannot anticipate claim 25, or any of its dependent claims 26-29.

With respect to the rejection of claims 25-29 as obvious over Baker within the meaning of 35 U.S.C. § 103, Applicants respectfully submit that Baker has no teaching, disclosure or other suggestion that would lead one of ordinary skill in the art to carry out the complete re-arrangement and redesign of Baker’s disclosed apparatus necessary to achieve Applicants’ claim 25. This would require at least lowering the left sprocket B5, and/or raising the right sprocket C5, and/or restructuring the pusher bars D’ to effect a back-and-forth movement of the cans. But, Baker does not suggest this redesign.

Baker therefore fails to establish *prima facie* obviousness of Applicant's claim 25, either viewed alone or in combination with any other items of cited prior art.

Dependent claims 26-30 are combination claims having all of their respectively recited elements in combination with all elements of base claim 25, and any intervening claims. These claims are therefore patentable over Baker for at least the reasons that base claim 25 is patentable.

For the foregoing reasons, Applicants respectfully request that the rejections of claims 25-30 over Baker be reconsidered and withdrawn.

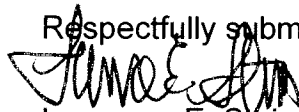
New dependent claims 31-35 are combination claims having all of their respectively recited elements in combination with all elements of base claim 25, and any intervening claims. These claims are therefore patentable over Baker for at least the reasons that base claim 25 is patentable

In view of the foregoing, it is requested that the application be reconsidered, that claims 25 – 35 be allowed, and that the application be passed to issue.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at 703-787-9400 (fax: 703-787-7557; email: larry@wcc-ip.com) to discuss any other changes deemed necessary in a telephonic or personal interview.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041 (Whitham, Curtis, Christofferson & Cook, P.C.).

Respectfully submitted,


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